

REMARKS

Claims 1-2, 7, 11, 13, 17, and 34-41 are pending. Entry of the amendment is respectfully requested. No new matter has been added. Reconsideration is requested.

Status of the pending claims

Claim 11 was allowed by the Office.

Claims 1, 2, and 7 were rejected under 35 U.S.C. § 103(a) over Wagner (U.S. 5,742,845) in view of Dasan (U.S. 5,761,662), Lawlor (US 5,220,501), and Simmons (US 5,974,451).

Claim 13 was rejected under 35 U.S.C. § 103(a) over Wagner in view of Dasan, Lawlor, Simmons, and Clausing (US 4,091,448).

Claim 17 was rejected under 35 U.S.C. § 103(a) over Wagner in view of Dasan, Lawlor, Simmons, and Patterson (US 5,915,246).

Dependent claims 34-41 are newly added.

The amendment

The article claim 38 corresponds to method claim 11 (indicated allowable by the Examiner). The article claim 39 corresponds to claim 17 (indicated allowable by the BPAI).

Applicants traverse the rejections

The Applicants respectfully disagree with the rejections. However, because of the unnecessary Office-caused prolonged prosecution, this application has been pending almost eleven years. It took the Office more than two years from the petition grant dated 2/25/2009 just to issue the current Office Action. It is only because of this prolonged prosecution that the claims are being amended herein. Applicants respectfully submit that the amendment should advance this application to an indicated allowance.

In accordance with 37 CFR § 1.111(b), the Applicants have an (unwanted) duty to point out clear “errors in the examiner's action” (MPEP § 714.02).

Claim 7

Claim 7 is currently rejected based *only* on Wagner in view of Dasan, Lawlor, and Simmons. However, both the BPAI decision (dated 4/18/2008) at page 32 and the Examiner's Answer (dated 12/6/2005) admit that a 35 U.S.C. § 103(a) rejection of claim 7 would further require applying the Patterson reference (i.e., Wagner in view of Dasan, Lawlor, Simmons, *and* Patterson). Thus, the record itself provides clear evidence that the pending rejection of claim 7 is deficient, and thus not legally valid.

Claim 7 is not amended herein. Thus, any new rejection of claim 7 cannot be made final.

Claim 17

Claim 17 is currently rejected based on Wagner in view of Dasan, Lawlor, Simmons, and Patterson. This rejection is *identical* to a previously appealed rejection of claim 17. That is, the pending rejection of claim 17 was already fully considered by the BPAI. In their decision (of 4/18/2008) the BPAI reversed this basis for rejecting claim 17. Thus, the Office is legally barred based on principles of *res judicata* from again asserting this *same* rejection. Prosecution cannot be based on a double jeopardy rejection. The Examiner is also committing prejudicial error.

The Office has no authority to continually reintroduce a rejection which was already reversed by the BPAI. Otherwise, prosecution length would be arbitrary and capricious, if not endless. Also, if such improper Office action is permitted then the appeal process would be rendered meaningless. The rejection of claim 17 is legally improper and must be withdrawn.

Claim 17 is not amended herein. Thus, any new rejection of claim 7 cannot be made final.

Authorization for Examiner's amendment

The Examiner in placing the application in condition for allowance is herein authorized to amend the claims by Examiner's amendment to: (1) place claim 17 into independent form; and (2) cancel claims 1-2, 7, and 13. As a result of the Examiner's amendment, claims 11, 17, and 34-41 will be pending and allowed.

If this application is not allowed, then Applicants plan to reintroduce the claims canceled herein. Thus, Applicants reserve all rights to reintroduce canceled claims.

Conclusion

Applicants respectfully submit that this application is now in condition for allowance. The undersigned is willing to discuss any aspect of the application at the Office's convenience.

Respectfully submitted,



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